

PREVALENCE AND IMPACT OF CRIMINALIZATION OF CARTEL AGREEMENTS

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Abstract

Purpose – it is appropriate to assess the prevalence of criminalization of cartels in the EU, the legal technique used to define criminal offenses, and to identify the most dangerous (more distorting) cartel arrangements. Also, the ability of Member States to identify and prevent cartel offenses through non-criminal law is to be assessed. Having established the preconditions for the criminalization of cartel stiffens, a model of criminalization of violations of competition law can be developed.

Design/methodology/approach – The study applied the teleological method to assess the EU criminalize the cartel objectives and expectations. Document analysis also applies systemic, linguistic, logical, historical and comparative methods.

Findings – Cartel agreements are widely recognized as an economic phenomenon that distorts the economy. It should be noted that the prohibition of cartel agreements actually originates from the original EU founding documents. The European Commission in this respect, points out that: Infringements of EU competition law such as cartels or abuses of dominant market positions cause very serious harm, not only to the economy as a whole but also to particular businesses and consumers. They may suffer harm, for example, because of higher prices or lost profits due to foreclosure from a market.¹ Thus, only fair competition can guarantee consumer rights. It is consumers who are particularly affected by cartel agreements, but their ability to defend their rights is limited and burdensome. It is believed that Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the

¹ 5 July 2018 European Commission - Press release Antitrust: Commission consults stakeholders on draft guidelines to help national courts estimate the economic harm caused by cartels, Brussels [http://europa.eu/rapid/press-release_IP-18-4369_en.htm]

Member States and of the European Union¹ (‘the Directive’) does not sufficiently safeguard the interests of consumers (per se in the public interest) as regards the specificity and vulnerability of consumers as market players.

Also, it should be noted that cartel agreements may be a manifestation of an existing corruption structure (corruption in the private sector). Ignoring such processes in the state can lead to irreparable damage to both business and public service.

Practical implications – The study will reveal the prevalence and effectiveness of criminal law measures to combat violations of competition law. These data will become the source of further research in this area.

Keywords: criminal responsibility, competition law, cartels, criminalization of cartel, Antitrust law.

Research type: general review.

¹ Official Journal of the European Union, L 349, 5 December 2014 [<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2014:349:TOC>]